

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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|--------------------------|---|------------------------|
| MAXINE KIZZEE | § | |
| <i>Plaintiff,</i> | § | |
| v. | § | CIVIL ACTION H-09-3268 |
| | § | |
| YALE VILLAGE APARTMENTS, | § | |
| <i>Defendant.</i> | § | |

MEMORANDUM AND RECOMMENDATION

This dispute is before the court on defendant Yale Village Apartments motion to dismiss (Dkt. 10) under Federal Rule of Civil Procedure 4(m).¹ Yale Village argues that plaintiff Maxine Kizzee failed to serve its corporate representative within 120 days of filing suit, in violation of Rule 4(m). At the initial scheduling conference on February 24, 2010, counsel for Kizzee requested a thirty-day extension to serve defendants. (Minute entry dated February 24, 2010 at 2:15 p.m.). Having shown good cause, Kizzee's oral motion was granted and a summons was subsequently issued to defendants on March 26, 2010. Because the period for effecting service of process on defendants was extended by thirty-days, (Minute entry dated February 24, 2010 at 2:16 p.m.) the court recommends that defendant's motion to dismiss (Dkt. 10) be denied.

¹ If service of a summons and complaint is not made on a defendant within 120 days after the filing of the complaint, then the court shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. FED. R. CIV. P. 4(m).

The parties have fourteen days from service of this Memorandum and Recommendation to file written objections. Failure to file timely objections will preclude appellate review of factual findings or legal conclusions, except for plain error. *See* FED. R. CIV. P. 72.

Signed at Houston, Texas on May 25, 2010.

Stephen Wm Smith
Stephen Wm Smith
United States Magistrate Judge